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**BEFORE THE**  
**STATE OF WISCONSIN**  
**DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Whether Land Owned by	)	
Curtis Starkey, Located in the Town	)	Case No. IH-96-06
of Sparta, Monroe County, Shall Continue	)	
as Forest Cropland	)	

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The Department of Natural Resources on its own motion caused an investigation to be made and requested a hearing to determine whether a parcel of land should continue as forest cropland. On November 10, 1994, the Department of Natural Resources entered Withdrawal Order #18241 alleging that the land had been partitioned in a manner not authorized by sec. 77.16(7), Stats.

On July 11, 1996, the Department of Natural Resources forwarded this matter to the Division of Hearings and Appeals for hearing. Pursuant to due notice, a hearing was held on September 25, 1996, in Sparta, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Jim Christenson  
P. O. Box 7921  
Madison, WI 53707-7921

Curtis and Margaret Starkey, by

Attorney Todd Ziegler  
P. O. Box 379  
Sparta, WI 54656-0379

**FINDINGS OF FACT**

1. Curtis and Margaret Starkey (Starkeys) owned a parcel of land in Monroe County. Forty acres of the parcel is located in the SWNE of section 34, Township 18

North, Range 4 West, Town of Sparta, Monroe County. By application dated March 14, 1983, the Starkeys petitioned the Department of Natural Resources (Department) to enter this land as forest cropland under Chapter 77, Stats. On October 19, 1983, the Department issued Order No. FC-5588 designating the land as forest cropland.

Order No. FC-5588 also designated an adjoining forty acres owned by the Starkeys in the NWNE of Section 34, Township 18 North, Range 4 West, Town of Sparta, Monroe County as forest cropland. That parcel is not a subject of this hearing.

2. On March 1, 1994, the Starkeys sold a portion of the subject parcel to Thomas and Gloria Burman (Burmans). The Burmans withdrew the parcel of land they purchased from forest cropland.

3. By letter dated September 23, 1994, the Department notified Mr. Starkey that declassification of his land as forest cropland was pending. The grounds for declassification were that the conveyance of land to the Burmans divided a quarter section of land. Only entire quarter sections of land may be designated forest cropland.

4. The record contains no evidence and the Department does not allege that the Starkeys failed in any way to fully comply with the management plan for the forest croplands. However, sec. 77.02(1), Stats., provides that only an "owner of an entire quarter section, fractional lot or government lot" may be approved as "Forest Croplands." (The terms "fractional lot" and "government lot" are defined at secs. NR 46.02(7) and (8), Wis. Adm. Code, respectively and are not applicable to this case.) Upon the sale of a portion of the quarter section to the Burmans, the SWNE quarter of Section 34, Township 18 North, Range 4 West, Town of Sparta, Monroe County could not continue as forest cropland.

#### CONCLUSIONS OF LAW

1. Pursuant to sec. 77.02(1), Stats., to place land into forest cropland an owner must own an entire quarter section of land. When the Starkeys conveyed a portion of the subject quarter section to the Burmans, that parcel lost its eligibility for forest cropland.

2. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary orders relating to withdrawal of forest croplands pursuant to sec. 227.43(1)(b) and 77.02, Stats.

#### ORDER

IT IS HEREBY ORDERED that pursuant to the foregoing Findings of Fact and Conclusions of Law, the lands described above owned by Curtis and Margaret Starkey are

withdrawn from entry under the Forest Crop Law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to sec. 77.10(1)(a), Stats.

IT IS FURTHER ORDERED that a copy of this order be transmitted by the Department of Natural Resources to the Wisconsin Department of Revenue, to the Clerk of the Town of Sparta, to the Register of Deeds of Monroe County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on October 22, 1996.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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Madison, Wisconsin 53705  
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By Mark J. Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.